IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/08/2002

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THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO.4566 OF 2001 AND W.P.NO. 7676 OF 2001
and
W.M.P.NoS.6456 & 10907 OF 2001

M. Syed Masood .. Petitioner in WP.4566/01

M. Jainulabdeen .. Petitioner in WP.7676/01

-Vs-

1. Tamil Nadu Wakf Board,
rep. by its Chief Executive
Officer,
No.3, Santhome High Road,
Chennai 4.

2. The Superintendent of Wakfs,
C/o. The Wakf Superintendent,
No.54, High Road, Tirunelveli.

3. The Wakf Inspector,
Kanyakumari,
26/2, Dargah Road,
Thuckalai post-629 175.

4. The Aloor Muslim Samudhaya
Committee, Aloor Village & Post,
Kalkulam Taluk, Kanyakumari Dist.
Pin: 629 801.
Rep. by its Muthavalli. .. Respondents in both WPs.

Petitions filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus as stated therein.

For Petitioner : Mr. Vijay Narayan

For Respondents 1-3: Mr.V. Ramesh
For Respondent-4 : Mrs. Hema Sampath

:J U D G M E N T

The facts giving rise to the present writ petitions briefly stated are as follows : -

Petitioner in these two writ petitions are brothers. It is claimed that they are members of fourth respondent wakf. In respect of the aforesaid wakf, in O.S.No.5/1942, a Scheme was framed under which Muthavalli of Aloor Muslim Samudhaya Committee is required to maintain a Marriage Register known as Nikah Register and the Muslims who reside in Aloor Village and marry within the jurisdiction of the Aloor Muslim Samudhaya Committee, are entitled to have their names entered in the Nikah Register. For the aforesaid purpose, a male member of the family is required to approach the Jamath to obtain an application form on payment of contribution and thereupon making endorsement and certification that the person belongs to Jamath, an extract of the marriage register is issued. It is stated that such a person is also entitled to other benefits including the benefit of participation in Muslim functions, festivals and also have the right in the burial ground.
It appears that a suit has been filed by the fourth respondent against the petitioner claiming permanent injunction and such suit is being contested by the petitioner on the ground that the disputed property belongs to the petitioner and his other family members. While the matter stood thus, the marriage of the petitioner's sister was fixed in July, 1999, but the petitioner's family came to understand that 4 th respondent was refusing to accept the donation and produce the Nikah Register for the purpose of entering the marriage. Thereafter notice was issued to 4th respondent with a copy to the first respondent, namely, Wakf Board, and the first respondent passed an order asking the Wakf Inspector, 3 rd respondent, to ensure the production of Nikha Register on 12.7.1999 . However, since 4th respondent refused to produce the Nikha Register, the sister of the petitioner filed W.P.No.13105 of 1999 for the issuance of writ of Mandamus directing the respondents 1 to 3 to enforce the order of the 1st respondent. The aforesaid writ petition was disposed of with the following observations :-

" . . The Learned counsel for the fourth respondent contended that the first respondent has no jurisdiction to issue such directions to th third respondent and the same will not bind the fourth respondent. When admittedly the fourth respondent has registered the marriages of the other two sisters of the petitioner, there cannot be any excuse for the fourth respondent at this stage to refuse the registration of the petitioner's mariage. As rightly contended by the learned counsel for the petitioner that the refusal to produce the Nikah Register by the fourth respondent is only due to the pendency of the Civil suit against the petitioner's brother and this is clear when the counsel for the fourth respondent represented that the family of the petitioner squating of the Wakf property and refused to vacate the same and as such the fourth respondent is not bound to produce the Nikah Register. The fourth respondent has failed to consider that the property dispute between the Wakf authorities and the petitioner's brother is independent and the same cannot have any bearing with regard to the registration of the marriage of the petitioner. When the refusal to produce the Nikah Register is a deliberate one, I am of the view that the fourth respondent has necessarily to be directed not only to produce the Nikah Register, but also to register the marriage of the petitioner which is to take place on 22-08-99.

Hence the fourth respondent is hereby directed to carry out the instructions of the first respondent dated 5-07-99 not only to produce the Nikah Register but also to register the petitioner's marriage on 22 nd August, 1999. Issue copy of this order to the respective counsel today and the counsel for the respondents are directed to receive the same and instruct their clients to carry out the directions of this court on 22-08-99 without fail. With the above directions, the writ petition is disposed of."

Thereafter when the question of the petitioner's mariage was involved, a request was made to fourth respondent, but the fourth respondent has refused to issue application form. Accordingly a request was made to the Wakf Inspector, third respondent, who after referring to the order of the High Court in W.P.No.13015 of 1999 which related to the petitioner's sister, directed 4th respondent to issue marriage application form and to register the marriage. However, since 4th respondent refused to act, the petitioner was forced to file the present writ petition.

2. The connected writ petition has also been filed on similar assertion by another brother of the petitioner in W.P.No.4566 of 2001.

3. In the counter affidavit filed on behalf of the fourth respondent it has been indicated that the petitioners are not the original inhabitants of the village and their father had been appointed by the fourth respondent to do the work of barber and they are not entitled to be considered as members of the Jamath. It has been further indicated that no writ of Mandamus would be maintainable against the fourth respondent, which is not a public authority. The claim of the petitioners that they were paying subscriptions, etc., have been denied.

4. In the earlier writ petition filed by the sister, a specific direction had been given by this Court. The Inspector of Wakf , third respondent has merely followed the observation in the earlier decision and directed 4th respondent to produce the Nikha Register. It is not disputed that the respondents 1 to 3 were empowered to issue directions to various wakfs and if any direction is given, the wakf unless successfully challenges such direction before the competent forum as envisaged under the Wakf Act, is required to follow such direction.

5. Even though 4th respondent is not a statutory authority there cannot be any dispute that it is discharging public duty such as allotting burial ground and recording the marriage in the Nikha Register. Therefore, the contention of the counsel appearing for the fourth respondent that no writ would be maintainable cannot be accepted and in appropriate cases, writ can be issued to enforce the compliance of the provisions contained in the Act and to enforce compliance of the lawful orders passed by the Inspector. As a matter of fact in the writ petition filed by the sister of the present petitioners, such writ had been issued and the present 4th respondent had complied with such direction without demur.

6. In the present case, the Inspector had issued a direction which admittedly had not been challenged by 4th respondent. In the absence of

any challenge in the normal course, such order should have been complied with by the 4th respondent. However, it appears that in the present case, the question relating to production of Nikha Register has become academic as the marriage of the petitioner has already taken place and has been recorded in another place. In view of such subsequent development, it is no longer necessary to issue direction as prayed for. Both the writ petitions are accordingly disposed of. There will be no order as to costs. Consequently, WMP.Nos.6456 and 10 907 of 2001 are closed.

Index : Yes
Internet : Yes

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To

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